

**Testimony on LR296 (Transcribed)
Before the Executive Committee
Nebraska Legislature**

**Dianne DeLair, JD
Senior Attorney
Disability Rights Nebraska**

Good afternoon,

My name is Dianne DeLair, spelled D-I-A-N-N-E D-E-L-A-I-R. I'm the senior staff attorney with Disability Rights Nebraska, a private nonprofit organization with the sole mission of advocating on behalf of and for people with disabilities in our State of Nebraska. You've heard the introduction from Senator Walz about the scope of the issue presented today that would cover LR296, and I'm here to tell you that this is not an isolated incident.

I've been with Disability Rights Nebraska for 18 years, practicing, going in and out of these facilities during that time. Things are bad, and they're getting worse. I'm here to talk to you a little bit today not only about my experience but also the law that's implicated with the policies and practices that continue to create and proliferate facilities that we're talking about today. I also have some documents here that I'd like entered into the record in its entirety.

First, I want to talk a little bit about the Americans with Disabilities Act and Title II, which implicates state and local governments. And essentially, Title II of the ADA, through its integration mandate, states that it's illegal for public entities – namely, state and local governments – to deny qualified individuals with disabilities the benefits of their programs, services, or activities. Okay, that's the law. And how are private facilities implicated by the ADA and Olmstead? Well, I'm going to talk a little bit about that.

So, the ADA's integration mandate has been interpreted by the U.S. Supreme Court in *Olmstead v. L.C.* and it states the "mandate is implicated where a public entity administers its programs in a manner that results in unjustified segregation of persons with disabilities." So here we have a system where there is a population of people who are neglected and forgotten and pushed into these types of assisted-living facilities and mental health centers. And they are primarily, the people living there, I would say almost 100 percent have a severe and persistent mental illness. Well, the ADA and *Olmstead*--that case was decided in 1999--that said, look, state, if you're going to operate programs for people with disabilities, you have to show that you're doing it in the most integrated setting possible. We know this can't happen overnight, but if you develop what's called an *Olmstead Plan*, this could be an affirmative defense against litigation, just one though. That doesn't mean you're still...you're not vulnerable. So let me just

read this to you. "More specifically, a public entity may violate the ADA's integration mandate when it: (1) directly or indirectly operates facilities and/or programs that segregate individuals with disabilities..." That's what's happening here, the facilities where people are isolated, congregated, and segregated. And, yes, the conditions are deplorable and inhumane and it's the right thing to do to make sure people are getting what they need. But the real issue here involves the state's influence into creating and perpetuating these facilities.

So the other part of that, and I'll just finish up, it "finances the segregation of individuals with disabilities in private facilities," and there are General State Funds that go to support the room and board that people pay, along with almost all of their Social Security income, "through its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs." Well, guess where people are discharged to from the hospital or the regional center? Places like this all over the state. What I'm doing for you now is mapping out potential litigation that the state is vulnerable to. Now you'll hear that, yes, we do have an Olmstead Plan. I'm a member of that committee, so, you know, there's a plan in place. That does not relieve the state of liability.

Also, the Department of Justice has been to other states dealing with a very similar problem to ours. And, you know, the settlement agreements go on for years. It's expensive litigation. In our response to the situation at Palmer, we reached out to the division and they told us, yes, we're trying to implement the Technical Assistance Collaborative recommendations, they are in our new strategic plan. Well, I've been doing this for 18 years and things are not changing. And, Senators, if the citizens of this state knew what was going on and saw and understood the conditions of how the most vulnerable were living, they would want you to act. And I know there will be a response from HHS today saying everything is okay. Well, it's not because people who left Palmer went to Blue Hill assisted living, Life Quest, and that place is shutting down next week. And so another 35-40 people are going to be displaced, scrambling around, trying to find a bed. And like I said, this is a symptom of a much greater problem with respect to the appropriate services that are available.